

**TESTIMONY OF GARY B. O'CONNOR
BEFORE THE COMMERCE COMMITTEE
OF THE GENERAL ASSEMBLY**

FEBRUARY 26, 2009

IN SUPPORT OF COMMITTEE BILL 6097

Good afternoon. My name is Gary O'Connor. I am a partner at the law firm of Pepe & Hazard, LLP and I have had the wonderful opportunity of serving as one of the Co-Chairs of the General Assembly's Brownfields Task Force. I would like to thank the Commerce Committee for the opportunity to speak today on the 2009 Brownfields Task Force Report and more specifically in support of Committee Bill 6097. This Bill incorporates many of the recommendations made by the Task Force in its 2009 report to the General Assembly. We look forward to working with the Commerce Committee to refine this Committee Bill to incorporate some of the suggestions offered by stakeholders, today.

Before I address some of the specifics of Committee Bill 6097, I would like to briefly comment on the 2009 Task Force Report. The 2009 Task Force Report largely reflects our recommendations in the 2007 and 2008 Reports with a few notable additions including recommendations to provide incentives for cost recovery actions, increased liability protection for municipalities and their development agencies who take title to contaminated property, and additional access rights for municipalities and their development agencies to perform environmental assessments on brownfield sites.

Perhaps more importantly, the Task Force—I want to make clear that the public sector members, as has been their policy, abstained from the vote approving the Report—has expressed its

extreme disappointment that despite all the good work of its members, this Commerce Committee and many of the members of the General Assembly, the brownfields program in the State of Connecticut remains an opportunity lost. As you may recall in 2007 and 2008, the Task Force proposed an initial capitalization of \$75 million, with an additional \$25 million per year for the next five years. As of this date, only \$2.25 million has been authorized by the State Bond Commission.

Please understand that the Task Force appreciates the extremely difficult situation facing the members of the General Assembly. The Task Force understands that it is no small task of eliminating an estimated deficit of \$9 billion over the next two fiscal years. At a first glance, it would appear untimely—perhaps in politics—to seek additional funding. However, the Task Force respectfully submits that in these tough economic times, rather than abandon a bona fide brownfields initiative, the State should embrace it. A comprehensive brownfields program is the lynch pin for many of the State's policy priorities: smart growth, economic development, urban revitalization, open space and job creation. When coupled with Federal programs, a State brownfields program will promote economic stimulus both in the short term and the long term.

The Federal Government has recognized the vital role of brownfields remediation and development as an economic stimulus. The \$787 billion American Recovery and Reinvestment Act signed into law on February 17th includes funding to create green jobs using a variety of mechanisms including \$100 million for competitive grants to evaluate and clean up Brownfields. This program will be administered by EPA. Our federal government recognizes the fact that Brownfields cleanups create jobs not only through the workers needed to do the cleanups

themselves, but subsequently with the new businesses that occupy the property and that the money invested in Brownfields cleanups is returned not just through job creation but also through increased tax revenue. Jobs created by Brownfields cleanups--both before and after--are taken by locally available workers, further stimulating local economies. Connecticut has the opportunity to capitalize on the federal program by demonstrating it is prepared to facilitate the development of Brownfields sites. Given the emphasis being placed on efficiency, transparency, and speed, it is critical that we adequately fund our state programs and enact the improvements necessary to expedite development. If we do not, we may see our neighbors winning grant monies that should be coming here for Brownfields projects.

The 2009 Task Force Report offers a number of very important reasons why investment in brownfields remediation and development makes good economic sense. It refers to a draft prepared by Paull Evans entitled, "*The Environmental and Economic Impacts of Brownfield Redevelopment*" which was promulgated by the Northeast Midwest Institute in July 2008. The Institute's Report offers a number of important findings:

- \$1.00 of public money leverages \$8.00 total investment.
- \$1.00 of public money for site preparation costs leverages \$20.00 in total.
- \$10,000 to \$13,000 in brownfields public investments produces one additional job.
- Property values within three-quarters of a mile of the cleanup increase 5 to 15%.
- Public investments in brownfields are recouped from local taxes in five years.
- 4.5 acres of greenfields are saved for every one acre of brownfields developed.

In short, investment in brownfields is an effective tool in creating jobs and spurring economic development.

The recommendations of the Task Force are set out in detail in the 2009 Report, so I won't burden you with a further explanation of every recommendation. I would, however, like to address a couple of the major recommendations.

Funding. The Task Force continues with its 2007 and 2008 quests for initial capitalization of \$75 million with an additional \$25 million per year for the next 5 years. Over the past 2 years, the Legislature has created an excellent brownfields grant and loan program under the auspices of the Commissioner of Economic and Community Development. This program, if funded, would be a major catalyst for economic growth and revitalization. Unfortunately, it has not received a dime, while industrial states have spent hundreds of millions of dollars. We continue to send the wrong message to stakeholders throughout the country, namely, that there are no brownfield opportunities in Connecticut.

Staffing. In 2006, the Legislature created the Office of Brownfields Remediation and Development ("OBRD"). OBRD's duties are quite broad. It must assist stakeholders, streamline the brownfield remediation and development process, identify potential sources of funding, develop procedures for expediting the application of funds, identify and prioritize statewide brownfields development opportunities, provide assistance and information concerning the State's technical, funding, regulatory and permitting programs and develop a communication and outreach program to educate municipalities, property owners, economic development agencies

and other organizations regarding the State's brownfields programs. OBRD must also administer the State's Brownfields Pilot Program. Critical to the success of the OBRD is the appointment of a director. A nationwide search for a director has been underway for over a year. In addition, adequate staffing of program managers, fiscal analysts, planners, project managers and program educators dedicated to brownfields development is essential. Accordingly, the Task Force again requests additional staffing and funding for the OBRD as well as the DEP and DECD, all of whom carry out the State's brownfields initiatives.

Tax Credits. Although not financially feasible this year, the Task Force wants to acknowledge the important role tax credits play in brownfields remediation and development. As we stated in our 2008 Report, states with robust brownfields programs rely on strong funding programs and comprehensive tax credits and incentives. Currently, Connecticut has neither.

Cost Recovery Actions. The Task Force recommends a revision of the current statutes to increase costs recovery rights against parties who have polluted sites in our State. Presently, the white night, or municipality, who wants to come in and remediate a property, for all practical purposes, has very little ability to collect from wrongdoers. Under Section 22a-452, there is a very short statute of limitations, a negligence standard which creates an almost insurmountable burden of proof, and a requirement that costs be advanced before a claim can be made. These factors effectively bar white nights and municipalities from costs recovery, which, in turn, only creates an additional disincentive to remediate and revitalize brownfields.

The Task Force has recommended that the State level the playing field by: (i) extending the statute of limitations to 6 years, (ii) creating a strict liability standard similar to that under CERCLA and (iii) allowing white nights and municipalities to file suit and recover prior to advancing the costs of funds for cleanup.

The Task Force believes that this is a cost effective tool which will incentivize municipalities and developers to invest in brownfields sites without costing the State any additional dollars.

On behalf of the members of the Brownfields Task Force, I would like to congratulate the Commerce Committee on its commitment to brownfields revitalization. Committee Bill 6097 is vitally necessary to provide for a meaningful State brownfields program. Let's send a strong message that the State is committed to brownfields remediation and redevelopment. I urge you and other members of the General Assembly to pass Committee Bill 6097.